

REMARKS

The Office Action of August 17, 2007, has been received and reviewed.

Claims 1-16 and 18-23 are currently pending and under consideration in the above-referenced application. Of these, claim 18 is “free of prior art,” while claims 1-16 and 19-23 each stand rejected.

Reconsideration of the above-referenced application is respectfully requested.

Information Disclosure Statement

Another copy of the Information Disclosure Statement that was submitted on March 14, 2002, is enclosed for consideration by the Examiner, along with the Form PTO-1449 that accompanied that Information Disclosure Statement, and a copy of a postcard that was not date stamped by the Office, but that the Office did send back to the undersigned attorney, indicating that the Office received the Information Disclosure Statement of March 14, 2002.

Rejections under 35 U.S.C. § 102

Claims 1-16 and 19-23 have been rejected under 35 U.S.C. § 102(e) for reciting subject matter that is purportedly anticipated by the subject matter described in U.S. Patent Application Publication 2002/0044942A1 of Dopson (hereinafter “Dopson”).

A claim is anticipated only if each and every element, as set forth in the claim, is found, either expressly or inherently described, in a single reference which qualifies as prior art under 35 U.S.C. § 102. *Verdegaal Brothers v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

It is respectfully submitted that Dopson does not qualify as prior art to the claims of the above-referenced application. In order for a reference to qualify as prior art under 35 U.S.C. § 102(e), that reference must have been filed or include a claim for priority to an application that was filed *before* the effective filing date of the claims at issue. A proper claim for priority for the subject matter recited in the claims of the above-referenced application has been made to the September 21, 2000, filing date of U.S. Application Serial No. 09/667,147. Dopson, which was

not filed until September 18, 2001, does not include a proper claim for priority to an earlier-filed application.

With respect to claims for priority, M.P.E.P. § 201.11 III (page 200-63), citing title 37 of the Code of Federal Regulations, provides:

the later-filed application must contain a specific reference to the prior application. This should appear as the first sentence(s) of the specification following the title preferably as a separate paragraph (37 CFR 1.78(a)) and/or in an application data sheet (37 CFR 1.76).

The first sentence following the title of Dopson does not include a priority claim. Nor was an application data sheet filed in Dopson. As neither of the requirements reiterated in M.P.E.P. § 201.11 have been met, Dopson is not entitled to the benefit of a filing date that precedes its own September 18, 2001, filing date. Therefore, Dopson does not qualify as 35 U.S.C. § 102(e) prior art to the above-referenced application and may not serve as the basis for a 35 U.S.C. § 102(e) rejection of any claim of the above-referenced application.

As such, under 35 U.S.C. § 102(e), claims 1-16 and 19-23 are allowable over Dopson.

Even assuming, for the sake of argument, that Dopson did qualify as prior art to the above-referenced application, it is respectfully submitted that an affidavit or declaration of prior invention may be filed pursuant to 37 C.F.R. § 1.131. There are only two situations where filing an affidavit or declaration under 37 C.F.R. § 1.131 is not appropriate: (1) when a rejection is based on a patent or pending application “which claims the same patentable invention as defined in § 41.203(a) of this title...” and (2) when the “rejection is based upon a statutory bar. 37 C.F.R. § 1.131. There have not been any allegations of a statutory bar in the above-referenced application. It has been asserted, however, that the claims of the above-referenced application are drawn to “the same patentable invention” as the claims of Dopson.

It is respectfully submitted that the claims of the above-referenced application are not drawn to the same patentable invention as the claims of Dopson. M.P.E.P. § 2301.03 (page 2300-3) clarifies the “same patentable invention” requirement of 37 C.F.R. § 41.203(a) as follows: “The Office practice and the case law define ‘same invention’ to mean patentably

indistinct inventions.” All of the claims that remain under consideration in Dopson are limited to processes that include collecting “fertilized eggs laid by [a] bird,” whereas the claims of the above-referenced application are drawn to “method[s] for causing a treated animal to elicit a T-cell mediated immune response,” which include “administering to the treated animal a quantity of a composition including an extract of an egg...”

As methods for collecting eggs from a transfer factor *source animal* are totally unrelated to methods for causing a *treated animal* to elicit a T-cell mediated immune response, such methods are patentably distinct from each other. Therefore, the claims of the above-referenced application and the currently pending claims of Dopson are not drawn to the same patentable invention. As such, it is respectfully submitted that the filing an affidavit or declaration of prior use under 37 C.F.R. § 1.131 would be an appropriate way to overcome the 35 U.S.C. § 102(e) rejections of claims 25-30, 33-41, and 43.

In view of the foregoing, it is respectfully requested that the 35 U.S.C. § 102(e) rejections of claims 1-16 and 19-23 be withdrawn, and that each of these claims be allowed.

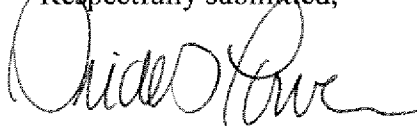
Allowable Subject Matter

The indication that claim 18 is drawn to subject matter that is “free of the prior art of record” is gratefully acknowledged.

CONCLUSION

It is respectfully submitted that each of claims 1-16 and 18-23 is allowable. An early notice of the allowability of each of these claims is respectfully solicited, as is an indication that the above-referenced application has been passed for issuance. If any issues preventing allowance of the above-referenced application remain which might be resolved by way of a telephone conference, the Office is kindly invited to contact the undersigned attorney.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Brick G. Power", written over a horizontal line.

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